

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS**

IN RE:

Application of Daufuskie Island Utility
Company, Inc. for Approval of an
Adjustment for Water and Sewer Rates,
Terms and Conditions

)
) **INTERVENORS HAIG POINT CLUB AND**
) **COMMUNITY ASSOCIATION, MELROSE**
) **PROPERTY OWNER’S ASSOCIATION**
) **AND BLOODY POINT PROPERTY**
) **OWNER’S ASSOCIATION’S MOTION TO**
) **REQUIRE BOND REFORMATION**
)

Haig Point Club and Community Association, Inc. (“HPCCA”), Melrose Property
Owner’s Association, Inc. (“MPOA”), and Bloody Point Property Owner’s Association
 (“BPPOA”) (the “POAs”) hereby move the Public Service Commission of South Carolina
 (“Commission”) for an Order requiring Daufuskie Island Utility Company, Inc. (“DIUC” or the
 “Applicant”) to reform Bond Numbers S001-1973 (**Exhibit One**) and S001-1977 (**Exhibit Two**)
 (together the “Bonds”) previously filed in this Docket.¹ In support of its Motion, the POAs
 would show the Commission the following:

ARGUMENT

1. A utility can only charge requested rates during an appeal and until final
 disposition of the case under an appropriate surety bond or other undertaking.² The bond must
 bind the surety to stand good for the utility if the utility fails to repay amounts it collects from its
 customers in excess of the amounts finally set by the Commission.³

¹ Matter 271116 dated June 30, 2017, <https://dms.psc.sc.gov/Attachments/Matter/a77353bd-0b65-4f78-8eb5-b5205c987ca9>

² S.C. Code Ann. § 58-5-240(D).

³ *Id.*

2. The Bonds fail to provide appropriate surety or meet this statutory requirement under the current procedural posture of the case. The Bonds, which are contracts, delineate the Surety's payment obligation through the following language:

KNOW ALL PEOPLE BY THESE PRESENTS, that Daufuskie Island Utility Company, Inc. as Principal and Allied World Insurance Company, hereinafter called Surety, a corporation licensed under the laws of the State of New Hampshire and duly authorized to transact business in the State of South Carolina, are held and firmly bound unto the Customers of Daufuskie Island Utility Company, Inc., as Obligee, affected by Order No. 2016-156 of the Public Service Commission, dated March 1, 2016, and any Order denying reconsideration thereof, issued in the above-captioned proceeding, for the sum of [*bond amount*], in lawful money of the United States of America, for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Commission Orders under appeal are ultimately determined to be valid and enforceable, then, Daufuskie Island utility Company, Inc. hereby promises to refund amounts it has collected in excess of the amounts finally determined to be correct under the appropriate rate schedules. Any such refunds shall include interest as provided by law. [emphasis added].

3. The second of these paragraphs sets conditions under which the Surety is obligated to pay on the bond. If DIUC fails to repay amounts it collects in excess of the amounts finally approved by the Commission, the POAs are concerned the Surety will not stand good for those unpaid amounts, asserting it is only obligated to pay "if the Commission Orders under appeal are...determined to be valid and enforceable." Because the Supreme Court invalidated the "Orders under appeal," DIUC's final rates must now be approved through a *new* Commission Order. The Orders referenced in this provision of the Bonds can, therefore, never be "determined to be valid and enforceable."

4. In order to satisfy the requirements of S.C. Code Ann. § 58-5-240(D), the Bonds must either be modified or supplemented with the Surety's enforceable pledge that it will stand good for any failure to reimburse by DIUC.

5. The POAs offer the following language for consideration by the Commission to rectify the Bonds' current failure:

KNOW ALL PEOPLE BY THESE PRESENTS, that Daufuskie Island Utility Company, Inc. as Principal and Allied World Insurance Company, hereinafter called Surety, a corporation licensed under the laws of the State of New Hampshire and duly authorized to transact business in the State of South Carolina, are held and firmly bound unto the Customers of Daufuskie Island Utility Company, Inc., as Obligee, affected by the water, sewer, and other rates that Principal began collecting on July 1, 2016 (the "Implemented Rates"), for the sum of [bond amount], in lawful money of the United States of America, for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if a the rates ultimately approved in the remand proceeding in Commission Docket No. 2014-346-WS (the "Approved Rates") are less than the Implemented Rates, Daufuskie Island Utility Company, Inc. hereby promises to refund the difference between those revenues it has collected pursuant to the Implemented Rates and those revenues to which it is entitled pursuant to the Approved Rates. Any and all such refunds shall include interest as provided by law.

6. Counsel for the POAs has attempted to resolve this issue with DIUC, but those attempts have been unsuccessful.

WHEREFORE, the POAs respectfully request that the Commission require DIUC to reform the Bonds as described herein, and grant such other and further relief as is just and proper.

ADAMS AND REESE, LLP

s/John F. Beach

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Columbia, South Carolina
October 18, 2017

**BEFORE
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SOUTH CAROLINA
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RE:

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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day the **Motion to Require Bond Reformation** by Haig Point Club and Community Association, Inc. ("HPCCA"), Melrose Property Owner's Association, Inc. ("MPOA"), and Bloody Point Property Owner's Association ("BPPOA") via electronic mail service as follows:

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s/John J. Pringle, Jr.

October 18, 2017
Columbia, South Carolina